

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Denial of Tax
Clearance for the Securities Agent
License of Kelly J. Swee

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on December 30, 2004, at the Office of Administrative Hearings in Minneapolis. The record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared for the Department of Revenue (Department).

Kelly J. Swee (Respondent), 2023 Boulder Road, Chanhassen, MN 55317, appeared on his own behalf without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should the Department deny a tax clearance for Respondent's securities agent license pursuant to Minn. Stat. § 270.72?

The Administrative Law Judge concludes the Department should deny tax clearance for Respondent's securities license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent holds a securities agent license (No. 2130239) issued by the Department of Commerce.

2. The Respondent failed to pay income taxes owed for tax years 1998 through 2002. For those years he owes \$3,150.45 in principal, \$918.00 in penalties, \$1,087.16 in interest, and \$30.00 for the fee from recording a state tax lien, for a total amount due of \$5,185.64.^[1]

3. The Respondent has failed to file an income tax return for tax year 2003.^[2]

4. On September 20, 2004, the Department gave notice of Respondent's tax liability to the Department of Commerce and advising that the Commissioner of Commerce should not issue, renew, or transfer Respondent's securities license until the Department of Revenue issued a tax clearance certificate.^[3] At the same time, the Department notified Respondent of the overdue amounts and the missing returns, and gave him notice that the Department of Commerce would not issue, renew, or transfer his securities license until the Department of Revenue issues a clearance certificate.^[4]

5. Respondent requested a hearing on September 27, 2004.^[5] This matter was referred to the Office of Administrative Hearings on November 19, 2004. The Notice of and Order for Hearing in this matter were issued on November 22, 2004.

6. The Respondent admits he has failed to pay the amounts owed; failed to file the income tax return for 2003; and failed to adhere to two payment plans negotiated with the Department of Revenue. He maintained he could not afford the payments because of other financial and legal difficulties. He indicated he desired to work out another payment plan with the Department.

7. The Department recommended that the Administrative Law Judge not file a report in this matter until 30 days after the hearing, and that if Respondent were to reach an agreement with the Department in that time, the Department would notify the Administrative Law Judge that the matter had been resolved and no report would be required.

8. It has been 30 days since the hearing, and the Department has not notified the Administrative Law Judge that the matter has been resolved.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. Respondent has failed to pay income taxes due for tax years 1998-2002, and he has failed to file an income tax return for tax year 2003.

4. Minn. Stat. § 270.72, subd. 1, provides in relevant part as follows:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade or business if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

5. Minn. Stat. § 270.72, subd. 3, provides in relevant part that if an applicant makes a written request for hearing within 30 days of the notice that a licensing authority shall not issue, transfer, or renew a license, a contested case hearing must be held within 45 days of the date the Commissioner of Revenue refers the case to the Office of Administrative Hearings. The applicant must receive 20 days' notice in writing specifying the time and place of hearing and the allegations made against the applicant.

6. The hearing was scheduled and heard in a timely manner, and the Respondent received timely written notice of reasons for denial of tax clearance.

7. Department has met the statutory requirements for notifying the Commissioner of Commerce that Respondent's securities license should not be issued, transferred, or renewed until the Department of Revenue issues a tax clearance certificate.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue deny a tax clearance for the Respondent's securities license.

Dated this 31st day of January, 2004.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape Recorded, two tapes.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

^[1] Ex. 5; Ex. 1.

^[2] Testimony of Laura Abbott.

^[3] Ex. 2.

^[4] Ex. 3.

^[5] Ex. 4.